U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 40085074

Date: SEP. 04, 2025

Motion on Administrative Appeals Office Decision

Form I-526, Immigrant Petition by Alien Entrepreneur

The Petitioner seeks classification as an immigrant investor pursuant to the Immigration and Nationality Act (the Act) Section 203(b)(5), 8 U.S.C. § 1153(b)(5).[1] This fifth preference (EB-5) classification makes immigrant visas available to aliens who invest the requisite amount of qualifying capital in a new commercial enterprise (NCE) that will benefit the U.S. economy and create at least 10 full-time positions for qualifying employees.

FOD denied the Petitioner's petition due to abandonment under 8 C.F.R. § 103.2(b)(15). The Petitioner filed a subsequent motion to reopen under 8 C.F.R. § 103.5(a)(2) explaining that the notice of intent to deny (NOID) was not received due to prior counsel's change of address. U.S. Citizenship and Immigration Services (USCIS) records show that prior counsel sent a change of address request after the issuance of the NOID. As the Petitioner did not establish that there was an error on the part of USCIS, FOD dismissed the motion. We dismissed a subsequent appeal because the Petitioner did not provide the required documentation to support a claim of ineffective assistance of counsel under *Matter of Lozado*, 19 I&N Dec. 637 (BIA 1988). The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

The scope of any motion is limited to "the prior decision" and "the latest decision in the proceeding." 8 C.F.R. § 103.5(a)(1)(i), (ii). Thus, our analysis for these combined motions is limited to the following: (1) whether the Petitioner establishes that the dismissal of the previous appeal was based on an incorrect application of law or policy; or (2) whether the Petitioner presents a new fact, supported by evidence, that shows proper cause to reopen our decision on the previous appeal. We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See*

[1] On March 15, 2022, the EB-5 Reform and Integrity Act of 2022 (RIA) was signed into law, revising general eligibility requirements, substantially reforming and codifying the Regional Center Program in section 203(b)(5) of the Act, and adding significant new integrity provisions. *See* Section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5) (2022). As the Petitioner had filed his petition prior to the implementation of the RIA, the relevant law then in existence governs this appellate adjudication.

Matter of Coelho, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome). Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *See INS v. Abudu*, 485 U.S. at 110.

On motion, the Petitioner has not stated any new facts or submitted additional evidence to establish that we erred in dismissing the prior appeal. The Petitioner, instead, submits on motion, a sworn statement asserting ineffective assistance of prior counsel and screenshots of an online submission form purporting to show an attempt to file a complaint with the State Bar of Georgia.

Under *Lozada*, a motion alleging ineffective assistance of counsel must:

- Include an alien's affidavit detailing their agreement with the allegedly ineffective counsel regarding actions to be taken and any representations by counsel;
- Demonstrate that the alien informed counsel of the ineffectiveness allegations and provided counsel an opportunity to respond; and
- Indicate whether a complaint was filed with appropriate disciplinary authorities regarding any violation of counsel's ethical or legal responsibilities, and if not, why not.

See Dakane v. U.S. Att'y Gen., 399 F.3d 1269, 1274 (11th Cir. 2005) (quoting *Matter of Lozada*, 19 I&N Dec. at 639).

A claim of ineffective assistance of counsel must be supported by an affidavit or sworn statement from the petitioner and this affidavit should set forth in detail the agreement with prior counsel, including the scope of representation and any fee arrangements, and provide a specific description of the actions that counsel agreed to take. It should also identify the specific conduct alleged to be deficient, explain why counsel's performance was ineffective, and demonstrate how this conduct adversely affected the outcome of the case. Here, the Petitioner submitted a sworn statement; however, it does not satisfy the outlined requirements because it is general and does not provide sufficient detail regarding the scope of representation, evidence of fee arrangements, information of the service counsel agreed to perform such as responsibility for address updates, or what instructions the Petitioner provided to counsel regarding this matter.

On motion, the Petitioner also submits screenshots purportedly showing an attempt to file a grievance with the State Bar of Georgia. However, the Petitioner did not submit sufficient evidence to establish that a complaint was actually filed with the appropriate disciplinary authority. Screenshots alone do not establish that the grievance was accepted. Absent independent confirmation such as an acknowledgement letter, case reference number, or other official documentation, the Petitioner has not satisfied the third prong of *Lozada*.

On motion, the Petitioner further contends that at the time the appeal was filed, the evidence of filing a grievance was not available. He asserts, however, that he was "aware" another former client of prior counsel had filed a grievance with the State Bar of Georgia regarding the same issue. The Petitioner

explains that for this reason he did not file his own grievance at that time. On motion, the Petitioner submits a letter from the State Bar of Georgia acknowledging that another individual filed a grievance against the Petitioner's prior counsel. The letter reflects that the grievance was dismissed because the individual failed to provide "any documents or other evidence to support [the] grievance" against prior counsel.

Aliens alleging ineffective assistance of counsel must "substantially" comply with the requirements described in *Lozada*. *See Dakane v. U.S. Att'y Gen.*, 399 F.3d at 1273-74 (requiring "substantial, if not exact, compliance with the procedural requirements of *Lozada*"); *see also Matter of Melgar*, 28 I&N Dec. 169, 171 (BIA 2020). The documentary requirements under *Lozada* are designed to ensure we possess the essential information necessary to evaluate ineffective assistance claims and to deter meritless claims. *See Matter of Lozada*, 19 I&N Dec. at 639. When essential information is lacking, we are unable to evaluate the substance of the ineffective assistance claims. *See id.* We may deny a claim of ineffective assistance if any of the *Lozada* threshold documentary requirements are not met. *Castillo-Perez v. INS*, 212 F.3d 518, 525 (9th Cir. 2000).

A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.

On motion, the Petitioner contests the correctness of our prior decision. On motion, the Petitioner submits a brief that reiterates arguments previously made and has not established proper grounds for reconsideration. Our prior decision properly analyzed the Petitioner's assertions. The Petitioner cannot meet the requirements of a motion to reconsider by broadly disagreeing with our conclusions; the motion must demonstrate how we erred as a matter of law or policy. *See Matter of O-S-G-*, 24 I&N Dec. 56, 58 (BIA 2006) (finding that a motion to reconsider is not a process by which the party seeks reconsideration by generally alleging error in the prior decision).

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility. On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.

NOTICE: Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.